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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,744	01/03/2007	Johann Kritzing	KRITZINGER ET'AL-2	5023
PCT				
EXAMINER				
DEUBLE, MARK A				
ART UNIT		PAPER NUMBER		
3651				
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06/05/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/582,744

Applicant(s)

KRITZINGER ET AL.

Examiner

MARK A. DEUBLE

Art Unit

3651

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☒ Claim(s) 2-49 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/55/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 states that “a length of the recessed groove corresponds to at least twice the maximum length of the elongate part.” This limitation renders the scope of the claim impossible to ascertain because the claim is directed to a separating mechanism and not to the combination of the separating mechanism and the elongate parts it separates from one another. A size relationship between a part of the separating mechanism of the present invention and something that is not part of the apparatus of the present invention may not be claimed because a person operating a similar conveyor apparatus could be guilty of infringing such an apparatus claim depending on a method of using apparatus rather than on the structure of the apparatus as is usually required for infringement of an apparatus claim. Such a relationship may be more appropriately claimed in a claim directed to a method of using the separating mechanism to separate items with a maximum length of no more than half the length of the groove or in a claim directed to the combination of a separating mechanism and elongate items to be separated wherein the length of the recessed groove corresponds to at least twice the maximum length of the elongate part. Appropriate correction is required.

Claim 2, lines 4-6 state that “the drive elements are formed by conveyor belts, in particular are integrally joined thereto.” However, this language leaves unclear to what the conveyor belts are joined. Appropriate correction is required.

Claim 14 recites the limitation “the driving portion” in lines 4-5. There is insufficient antecedent basis for this limitation in the claim.

Claim 22 states that “a minimum depth of the recessed groove is at least slightly bigger than a normal distance measured between a surface center of gravity of the individual elongate part lying in the cross-sectional plate and the groove base.” This language renders the scope of the claim indefinite for the same reasons as claim 1 was rendered indefinite. A size relationship between a part of the separating mechanism of the present invention and something that is not part of the apparatus of the present invention may not be claimed because a person operating a similar conveyor apparatus could be guilty of infringing such an apparatus claim depending on a method of using apparatus rather than on the structure of the apparatus as is usually required for infringement of an apparatus claim.

Regarding claim 25, the phrase “of the type” renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by “of the type”), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim 22 states that conveyor belt has “a width corresponding to at least twice the maximum length of the elongate part.” This language renders the scope of the claim indefinite for the same reasons as claim 1 was rendered indefinite. A size relationship between a part of the separating mechanism of the present invention and something that is not part of the apparatus of the present invention may not be claimed because a person operating a similar conveyor

apparatus could be guilty of infringing such an apparatus claim depending on a method of using apparatus rather than on the structure of the apparatus as is usually required for infringement of an apparatus claim.

Regarding claim 32, the phrase "of the type" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "of the type"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

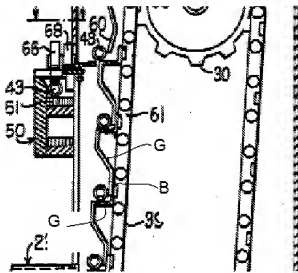
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Clark (US 2,954,862).

Clark shows a separating mechanism for conveying and separating elongate parts 43 from a part quantity in a conveying direction extending transversely to their longitudinal extension. The separating mechanism includes a pick-up region 25 for a part quantity of elongate parts and a discharge region 61 for elongate parts separated from the part quantity disposed above it. The mechanism includes two endlessly circulating, drivable conveyor elements 38 extending between the pick-up region and the discharge region. The conveyor elements have driver elements 40 disposed one after the other in the conveying direction and extending parallel with one another transversely to the conveying direction. Each driver element has at least one recessed groove on its external face directed towards the pick-up region extending in its longitudinal direction and open in the direction towards the pick-up region with

an approximately trapezoidal cross-section for accommodating elongate parts as and when necessary. Each recessed groove is bounded by a groove base B and guide surfaces G extending at an angle towards one another (see the portion of Fig. 2 reproduced below). The planes of the two guide surfaces subtend an angle of less than 90° . Thus Clark shows all the structure required by claim 1.



In regard to the recitation of “a length of the recessed groove corresponds to at least twice the maximum length of the elongate part”, it should be noted that the claims are directed to the separating mechanism and not the combination of the separating mechanism and elongate parts having half the length of the groove. Therefore, because the separating mechanism of Clark could be used with elongate parts having half the length of the grooves, it has all the structure required by the claim.

5. Claims 2-49 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK A. DEUBLE whose telephone number is (571)272-6912. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark A. Deuble/
Primary Examiner
Art Unit 3651

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